

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

_____)	
UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	Civil Action No. 10-C-910
)	
v.)	Hon. William C. Griesbach
)	
NCR CORPORATION, et al.)	
)	
Defendants.)	
_____)	

**UNITED STATES' RESPONSES AND OBJECTIONS TO
DEFENDANT NCR CORPORATION'S NOTICE OF DEPOSITION
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)**

The United States hereby provides its responses and objections to NCR Corporation's August 14, 2012, Notice of Deposition of the United States of America Pursuant to Fed. R. Civ. P. 30(b)(6) (the "Notice").

GENERAL RESPONSES AND OBJECTIONS

1. The United States objects to the Notice to the extent that it purports to impose requirements beyond those contained in the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Wisconsin, any Order of the Court, or the Parties' agreements pertaining to the scope of discovery, including, but not limited to, the following agreements and Orders in this case: (1) the Parties' Agreement Relating to the Preservation and Production of Documents, Attachment 1 to the Parties' Joint Discovery Plan, Dkt. 260; and (2) the Court's Supplemental Case Management Order, Dkt. No. 401.

2. The United States objects to the Notice to the extent that it seeks classified materials or information protected from disclosure by the attorney-client privilege, the work product doctrine, the deliberative process privilege, the joint prosecution or common interest privilege, any state or federal right of privacy, or any other cognizable privilege. Inadvertent disclosure of any privileged or protected information shall not constitute a waiver of any privilege nor a waiver of any rights the United States may have to secure the return of such material and/or object to the use of such material, including the use of any such material in any subsequent proceedings in this case or at trial.

3. The United States objects to the Notice to the extent that it seeks any information or documents that the United States has obtained at the direction of counsel from the public domain, as such documents and information are privileged work product inasmuch as the particular documents chosen for copying by legal representatives would reflect counsel's impressions and thought processes.

4. The United States objects to the Notices to the extent that it seeks information or documents not in the possession, custody, or control of the United States.

5. The United States objects to the Notice to the extent it is ambiguous, vague, unclear, or not susceptible to a commonly understood meaning.

6. The United States objects to the Notice to the extent that it requires the review or analysis of records and documents where such review or analysis would be unduly burdensome, duplicative, cumulative, or require the disclosure of work product or other protected information.

7. The United States object to the Notice to the extent that it seeks information that it is not reasonably calculated to lead to the discovery of admissible evidence. The United States object to the Notice to the extent that it is overbroad, unduly burdensome, or irrelevant, and to the extent it seeks discovery regarding issues that are not relevant to Phase 1 of this litigation.

8. The United States objects to the Notice as not reasonably calculated to lead the discovery of admissible evidence. Judicial review regarding the United States' and Wisconsin's selection of the remedy is limited to the administrative record. 42 U.S.C. § 9613(j)(1).

9. The United States objects to the Notice as untimely because the Parties' Agreement Relating to the Preservation and Production of Documents, Attachment 1 to the Parties' Joint Discovery Plan, Dkt. 260 calls for at least 30 days notice of a proposed deposition pursuant to Fed. R. Civ. P. 30(b)(6).

10. James Hahnenberg, who is scheduled for a deposition on August 28, 2012 in Milwaukee, Wisconsin, has previously been designated to testify on behalf of the United States concerning "[t]he development of the cost estimates for the remedial alternatives evaluated at the Site, including the remedial alternatives selected in the Records of Decision in 2003 and 2007 for Operable Units 3-5, and the Explanation of Significant Differences issued in [2010]" in response to a separate 30(b)(6) notice served by Menasha Corporation. To the extent that NCR's Notice duplicates that topic, Mr. Hahnenberg also will serve as the United States' Rule 30(b)(6) designee, subject to the objections set forth in the United States' August 16, 2012, Responses and Objections to Menasha's notice. To the extent that NCR's Notice encompasses additional or related topics, the Specific Responses and Objections set forth below shall apply. Although the United States expects no conflict between Mr. Hahnenberg's Rule 30(b)(6) testimony on the above-quoted topic and any testimony by another 30(b)(6) designee for the United States on an overlapping topic covered by this Notice, Mr. Hahnenberg's Rule 30(b)(6) testimony shall govern as the testimony given on behalf of the United States in case of any conflict.

All testimony provided in response to the Notice is taken subject to, and without waiver, of any objections asserted herein:

SPECIFIC RESPONSES AND OBJECTIONS
TO DEPOSITION TOPICS

1. The United States' estimate of costs incurred by API, NCR, and/or the Lower Fox River Remediation LLC ("LLC") for remedial action work required by the U.S. Environmental Protection Agency's ("EPA") Administrative Order for Remedial Action ("Unilateral Administrative Order") in each of the OUs, including Upper and Lower OU4, and the information and assumptions used in determining or assessing that estimate;

RESPONSE: Subject to the General Responses and Objections set forth above, the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

2. The United States' current estimate of costs of performing the remaining portion of the remedial action work required by EPA's Unilateral Administrative Order in each of the OUs, including Upper and Lower OU4, and the information and assumptions used in determining or assessing that estimate;

RESPONSE: Subject to the General Responses and Objections set forth above, the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

3. The United States' current estimate of the total cost (past and future) of the remedial action work required by the EPA's Unilateral Administrative Order, in each of the OUs, including Upper and Lower OU4, and the information and assumptions used in determining or assessing that estimate;

RESPONSE: Subject to the General Responses and Objections set forth above, the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

4. The information, analyses and assumptions used in determining or assessing the estimated cost and cost-effectiveness of the remedial action work required by the EPA's Unilateral Administrative Order as set forth in the order issued on November 13, 2007, the EPA's February 2010 Explanation of Significant Differences and the associated Criteria Analysis Memorandum, and the EPA's June 2012 Memorandum to File and the associated Technical Memorandum;

RESPONSE: The United States objects to this topic as not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information beyond the administrative record contrary to 42 U.S.C. § 9613(j)(1). Subject to that specific objection and the General Responses and Objections set forth above (specifically including General Response and Objection No. 10), the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

5. The United States' estimate of the volume of PCBs and PCB-contaminated sediment already remediated in Upper and Lower OU4 by NCR or API and/or the LLC under the EPA's Unilateral Administrative Order;

RESPONSE: Subject to the General Responses and Objections set forth above, the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

6. The United States' estimate of the remaining volume of PCBs and PCB-contaminated sediment required to be remediated in Upper and Lower OU4 under the EPA's Unilateral Administrative Order; and

RESPONSE: Subject to the General Responses and Objections set forth above, the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

7. The United States' estimate of the total volume of PCBs and PCB-contaminated sediment required to be remediated in each of the OUs, including Upper and Lower OU4, by NCR and/or the LLC under the EPA's Unilateral Administrative Order.

RESPONSE: Subject to the General Responses and Objections set forth above, the United States intends to designate George Berken as its Rule 30(b)(6) witness on this topic. Mr. Berken will be produced for deposition in Milwaukee, Wisconsin on August 27, 2012.

For the United States of America

IGNACIA S. MORENO
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Dated: August 21, 2012

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CERTIFICATE OF SERVICE

I, Randall M. Stone, certify that on August 21, 2012, I caused a true and correct copy of the UNITED STATES' RESPONSES AND OBJECTIONS TO DEFENDANT NCR CORPORATION'S NOTICES OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6) to be served on counsel of record via e-mail to:

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